

AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is made as of the date next to the last signature hereto (the "Effective Date") by and between San Luis Obispo County (hereinafter "County"), and Mental Marketing Inc. and TJA Advertising (hereinafter "Marketing Agency") with reference to the following facts.

RECITALS

WHEREAS, the County Board of Supervisors approved the creation of the San Luis Obispo Business Improvement District ("CBID") and appointed an advisory committee (the "CBID Advisory Committee") to make recommendations regarding CBID activities; and

WHEREAS, the CBID Advisory Committee has recommended that, in order to carry out its functions, it is necessary and desirable to employ the services of Mental Marketing Inc. and TJA Advertising to work with the CBID for this purpose; and

WHEREAS, Mental Marketing Inc. and TJA Advertising each represents that it is a duly qualified marketing agency with a breadth of experience in, among other things, media relations, media communication tools, branding, events and activities, and stewardship programs; and

WHEREAS, Mental Marketing Inc. and TJA Advertising each provides special services and County has no employees available to do such work; and

WHEREAS, Mental Marketing Inc. and TJA Advertising are each willing, able and capable to provide the desired services to County/CBID in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Mental Marketing, Inc. and TJA Advertising have each agreed that they will be jointly and severally responsible for carrying out their obligations under this Agreement,

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Mental Marketing Inc. and TJA Advertising Specified Services.

Mental Marketing, Inc. and TJA Advertising ("Marketing Agency") agree that they shall be jointly and severally responsible for performing the services as outlined and shown in the Marketing Plan and Scope of Work attached as Exhibit A within the times or dates agreed upon with the CBID Advisory Board.

Mental Marketing, Inc and TJA Advertising further agree that they will be jointly and severally liable for all duties and obligations as set forth in this Agreement.

1.2 Creative Works and Intellectual Property.

All trademarks and service marks developed on the County's behalf during the term of this Agreement are and shall remain the County's exclusive property. County is responsible for ensuring that any work completed by Marketing Agency can be trademark and/or copyright protected. The parties understand that, subject to the confidentiality obligations set forth herein and pursuant to applicable law, Marketing Agency retains the right at all times to use any creative works developed by Marketing Agency as examples of Marketing Agency's work. Each party agrees to execute any such further documents as may be necessary or appropriate to protect or enforce the rights set forth in this paragraph.

1.3 Cooperation with CBID.

Marketing Agency shall work closely with the County, CBID and the appointed CBID staff in the performance of all work hereunder.

1.4 Performance Standard.

During the term of this Agreement, Marketing Agency agrees to treat as private and confidential any and all information, which is not otherwise publicly available under applicable law, relating to the County's business, including but not limited to projections, pricing, marketing strategies and customer base. Marketing Agency will not release any such information to any person, firm or institution unless specifically directed or permitted by an authorized representative of Client in writing.

Further, during the term of this agreement and for one year thereafter, the County and Marketing Agency mutually agree that they shall not extend offers of employment or consultancy to each other's employees without prior agreement between the County's appropriate senior executive and Marketing Agency's President.

1.5 Website Evaluation.

The County and/or CBID Advisory Board will evaluate the Marketing Agency's development and maintenance of the CBID's website, "*winecoastcountry.com*", six (6) months from the date of this agreement. The County and/or CBID Advisory Board reserve the right to amend the contract scope and budget amount according to the result of that evaluation.

1.6 Assigned Personnel.

In the event that Marketing Agency has any employees and desires to have them assist with the work as described in Paragraph 1.1, Marketing Agency shall assign only competent personnel to perform work hereunder. In the event that at any time County and/or CBID, for no good cause shown, desires the removal of any person or persons assigned by Marketing Agency to perform any work hereunder, Marketing Agency shall remove such person or persons immediately upon receiving written notice from County or CBID.

2. Payment.

For all services and incidental costs required hereunder, Marketing Agency shall be compensated as set forth in the Scope of Work. Total cost of services shall not exceed **\$752,000** (\$356,000 for FY 2012-13 and \$396,000 for FY 2013-13). Mental Marketing Inc. and TJA Advertising shall jointly invoice the County and CBID for all services provided hereunder. Invoices will be sent on a monthly basis, by the tenth of the month following. Invoices are net 10 days. Invoices will reference each project Scope of Work, phases, services, media costs, production, ancillary fees, material expenses and sales tax, where applicable. County warrants will be mailed to one address that has been provided by Mental Marketing Inc. and TJA Advertising.

3. Term of Agreement.

The term of this agreement shall be for two (2) years beginning July 1, 2012 through June 30, 2014 except in the event that the funding of the CBID through assessments upon the lodging businesses within its boundaries is not renewed for FY 2013-14. At which time all work will cease, this Agreement shall be terminated and Marketing Agency will submit an invoice for work completed to date.

4. Prosecution of Work.

4.1 Commencement of Work.

The execution of this Agreement by the County shall constitute Marketing Agency's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Marketing Agency's performance of this Agreement shall be extended by a number of days equal to the number of days Marketing Agency has been delayed.

4.2 Extra or Changed Work.

Only the CBID's Chair, in conjunction with County CBID administrative staff, may authorize extra or changed work or waive Agreement requirements. Said authorization and/or waiver must be in writing.

5. Representations and Warranties of Mental Marketing, Inc. and TJA Advertising.

5.1 Standard of Care

Marketing Agency hereby warrants that all its work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it

being understood that acceptance of Marketing Agency's work by County and CBID shall not operate as a waiver or release.

5.2 Status of Mental Marketing, Inc. and TJA Advertising.

The parties intend that Marketing Agency, in performing the services specified herein, shall act as an independent contractors, and shall control the work and the manner in which it is performed. Marketing Agency is an independent contractor and is not to be considered an agent or employee of County and/or CBID and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits County and/or CBID provides its employees.

5.3 Taxes.

Except as elsewhere herein provided, Marketing Agency agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Marketing Agency agrees to indemnify and hold County and CBID harmless from any liability which it may incur to the United States or to the State of California as a consequence of Marketing Agency's failure to pay, when due, all such taxes and obligations.

5.4 Records Maintenance.

Marketing Agency shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County and CBID for inspection at any reasonable time.

5.5 Conflict of Interest.

Marketing Agency covenants that it presently has not interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

5.6 Nondiscrimination.

Marketing Agency shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in the Agreement are incorporated by this reference.

6. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

TO: Nikki J. Schmidt
Administrative Office
County of San Luis Obispo
1055 Monterey Street, Room D430
San Luis Obispo CA 93408

TO: Mark Elterman
Mental Marketing Inc.
1080 Tishlini Lane
Templeton CA 93465

TO: John Sorgenfrei
TJA Advertising
PO Box 2738
Pismo Beach CA 93448

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given notice pursuant to this paragraph.

7. Resolution of Disputes.

The parties agree that disputes, which cannot be resolved by the parties alone, will be resolved by the following process:

7.1 Mediation.

The parties agree to mediate any dispute or claim between them arising out of this Agreement or any resulting transaction before resorting to arbitration or court action. The mediation fee, if any, shall be divided equally among the parties involved. In advance of the mediation, the parties shall voluntarily exchange all documents requested by the other party that relate to the dispute. Issues concerning discovery shall be submitted to the mediator prior to mediation; the mediator's decision shall be binding upon the parties to the dispute. Statements made during any mediation proceeding shall not be admissible in a subsequent arbitration or court proceeding, and shall be privileged to the full extent permitted under California law. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempt to resolve the matter through mediation, then in the discretion of the arbitrator(s) or judge, the other party may apply to such arbitrator or judge for an order staying the arbitration or court action pending mediation.

7.2 Arbitration.

If the parties cannot resolve the dispute with the assistance of a mediator, the parties shall submit the dispute to binding arbitration. So that all claims, disputes, or controversies that may arise can be resolved by arbitration, any dispute or claim in law or equity between the parties arising out of this contract or the breach thereof, or any resulting transaction which is not resolved through mediation, shall be decided by neutral, binding arbitration and not by court action, except as provided by law for judicial

review of arbitration proceedings. Arbitration shall take place in San Luis Obispo County California. The arbitration shall be conducted in accordance with the rules of either the American Arbitration association ("AAA") or Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The selection between AAA and JAMS rules shall be made by the claimant first filing for the arbitration, but the parties to the arbitration may agree in writing to use different rules or arbitrators.

8. Termination of Contract for Convenience of Either Party.

Either party may terminate this contract at any time by giving to the other party 30 days written notice of such termination. Termination shall have no effect on upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Marketing Agency shall be paid for all work satisfactorily completed prior to the effective date of said termination.

9. Termination of Contract for Cause.

If Mental Marketing fails to perform Mental Marketing's duties to the satisfaction of the County or CBID or if Marketing Agency fails to fulfill in a timely and professional manner Marketing Agency's obligations under this Contract or if Marketing Agency shall violate any of the terms or provisions of this Contract or if Marketing Agency, Marketing Agency's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County and/or CBID, then County shall have the right to terminate this Contract effective immediately upon the County giving written notice thereof to the Marketing Agency. Termination shall have no affect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Marketing Agency shall be paid for all work satisfactorily completed prior to the effective date of such termination. If County's termination of Marketing Agency for cause is defective for any reason, including but not limited to County's reliance on erroneous facts concerning Marketing Agency's performance, or any defect in notice thereof, County's maximum liability shall not exceed the amount payable to Marketing Agency under paragraph 2 above.

10. No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

11. Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of the State of California. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of San Luis Obispo.

12. Indemnification.

Marketing Agency shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions

relating to the performance of any duty, obligation or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

It is the intent of the parties to provide the County the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

13. Non-Assignment of Contract.

Inasmuch as this Contract is intended to secure the specialized services of Marketing Agency, Marketing Agency may not assign, transfer, delegate or sublet any interest therein without the prior written consent of County and any such assignment, transfer, delegation, or sublease without the County and CBID's prior written consent shall be considered null and void.

14. INSURANCE.

Marketing Agency, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

14.1 Minimum Insurance Requirements.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

14.2 Commercial General Liability Insurance Policy ("CGL")

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

- \$1,000,000 each occurrence (combined single limit);
- \$1,000,000 for personal injury liability;
- \$1,000,000 aggregate for products-completed operations; and
- \$1,000,000 general aggregate.

The general aggregate limits shall apply separately to Marketing Agency's work under this Agreement.

14.3 Business Automobile Liability Policy ("BAL")

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. Marketing Agency shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

14.4 Workers' Compensation And Employers' Liability Insurance Policy ("WC/EL")

This policy shall include at least the following coverages and policy limits:

14.4.1 Workers' Compensation insurance as required by the laws of the laws of the State of California; and

14.4.2 Employer's Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein "BI"); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI disease.

14.5 Deductibles And Self-Insurance Retentions

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Marketing Agency and approved by the County before work is begun pursuant to this Agreement. At the option of the County, Marketing Agency shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

14.6 Endorsements

All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

14.6.1 A "Cross Liability," "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);

14.6.2 The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of Marketing Agency's performance of work under this Agreement (CGL & BAL);

14.6.3 If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL)

14.6.4 This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);

14.6.5 No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC /EL & PL);

14.6.6 Marketing Agency and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

14.6.7 Deductibles and self-insured retentions must be declared (All Policies).

14.7 Absence Of Insurance Coverage

County may direct Marketing Agency to immediately cease all activities with respect to this Agreement if it determines that Marketing Agency fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Marketing Agency's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to Marketing Agency.

14.8 Proof of Insurance Coverage and Coverage Verification.

Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, Marketing Agency, or each of Marketing Agency's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for Marketing Agency shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

MENTAL MARKETING INC.

COUNTY OF SAN LUIS OBISPO

By: _____

By: _____

TJA ADVERTISING

AUTHORIZED BY BOARD ACTION

By: _____

_____ 2012

DATED: _____

ATTEST

By: _____

Clerk of the Board of Supervisors

DATED: _____

APPROVED AS TO FORM AND LEGAL EFFECT:
WARREN R. JENSEN
County Counsel

By: _____

Assistant County Counsel

Dated: _____

7/6/2012